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October 4, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
455 12th Street, S.W., TW-A325
Washington, DC 20554

Re: WT Docket No. 01-14: Notice of Ex Parte Presentation

Dear Ms. Salas:

This letter is to inform you that on October 3, 2001, Daniel Pegg of Leap Wireless International, Peter Cramton of the University of Maryland and William Carnell of Latham & Watkins had separate meetings with David Sappington, Donald Stockdale, James Bird, Nandan Joshi, Robert Pepper, and Lauren Kravetz; and with Jeffrey Steinberg, Susan Singer and Lauren Kravetz. The subject of each of these meetings was the CMRS spectrum cap.

The parties discussed Leap's support for the spectrum cap, and reviewed information already within the administrative record. The parties also discussed the attached handout, which was originally filed as an ex parte presentation in this docket by the CTIA. Messrs. Pegg, Cramton and Carnell disagreed with many of the assertions made in that presentation, and disagreed with its conclusion that the spectrum cap should be abolished.

Counsel for Leap also stated that according to Mark Kelley, Leap's Chief Technical Officer, functional AMPS capacity could be maintained by cellular carriers on less than 2 MHz of spectrum: one channel per sector (at 30 KHz per channel) with 21X re-use requires a total of 630 KHz each for uplink and downlink, for a total of 1.26 MHz, plus a generous 500 KHz guard band. With two channels per sector, cellular carriers would use 3.02 MHz total, and even with three full channels per sector (which would support far more than the minimal usage required by the Commission's rules) they would use only 4.14 MHz – again

LATHAM & WATKINS

Ms. Magalie Roman Salas
October 4, 2001
Page 2

including the guard band. While these numbers do show the inefficiency of AMPS technology, they also show that AMPS capability can be maintained using a small amount of spectrum.

The original and one copy of this letter are enclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read 'W. S. Carnell', with a long horizontal flourish extending to the right.

William S. Carnell
of LATHAM & WATKINS

cc: David Sappington
Donald Stockdale
James Bird
Nandan Joshi
Robert Pepper
Lauren Kravetz
Jeffrey Steinberg
Susan Singer



CTIA

Building The Wireless Future™
Cellular Telecommunications & Internet Association

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 21, 2001

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

Re: *Ex Parte* Presentation
CC Docket No. 01-14

Dear Ms. Salas:

On September 21, 2001, the Cellular Telecommunications & Internet Association ("CTIA") represented by Michael Altschul, Diane Cornell, and Chris Guttman-McCabe, along with Marius Schwartz, Georgetown University and CTIA Consultant, met with Bryan Tramont, Senior Legal Advisor for Commissioner Abernathy. The parties discussed issues related to removal of the spectrum cap. In particular, the parties discussed the attached presentation.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter is being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Christopher Guttman-McCabe

Attachment(s)

No. of Copies rec'd 0+1
List ABCDE





CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

SPECTRUM CAP PRESENTATION

September 21, 2001



OVERVIEW



- THE CMRS INDUSTRY NO LONGER REQUIRES A UNIQUE MECHANISM TO PROTECT COMPETITION.
- ANTITRUST REVIEW PROVIDES A MORE ACCURATE COMPETITIVE ANALYSIS THAN THE SPECTRUM CAP.
- THE SPECTRUM CAP DOES NOT RESULT IN SAVINGS OF RESOURCES OR ADMINISTRATIVE COSTS.
- THE SPECTRUM CAP CAUSES AFFIRMATIVE HARM.
- RAISING THE CAP IS NOT THE BEST SOLUTION.

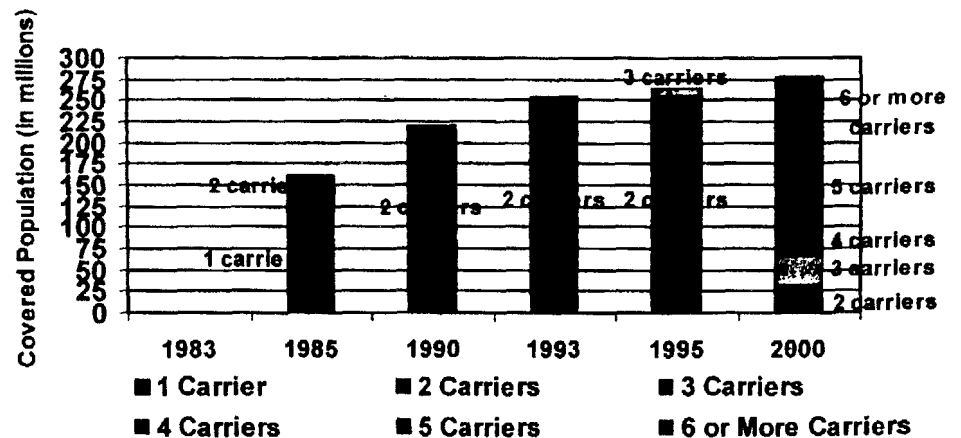


THE CMRS INDUSTRY NO LONGER REQUIRES A UNIQUE MECHANISM TO PROTECT COMPETITION

- The spectrum cap was designed initially to ensure that CMRS spectrum would be licensed to more firms than the two cellular incumbents.
- The CMRS industry is no longer a nascent industry. New entrants have constructed systems and provided services for several years.
- If industry-specific rules no longer are justified by their original purpose, the FCC only should maintain those rules if they serve a necessary function.



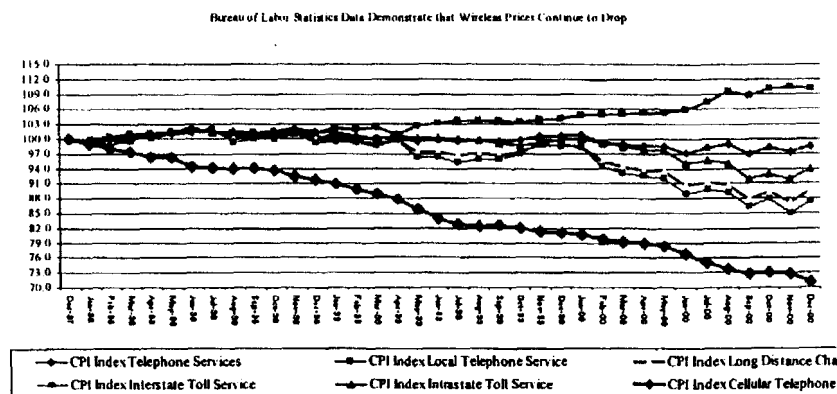
- Competition in the wireless industry is well established:
- Today, 265 million Americans can choose from between 3 and 8 wireless service providers.
- More than 202 million Americans can choose from among 5 providers.
- More than 92 million Americans can choose from among 6 providers.





- Wireless prices have fallen dramatically:

- Average monthly wireless bills have fallen by more than 50% in the past decade.
- Consumers in areas where there are 3 or fewer carriers typically still benefit from low prices in nationwide plans.





ANTITRUST REVIEW PROVIDES A MORE ACCURATE COMPETITIVE ANALYSIS THAN THE SPECTRUM CAP

- DOJ merger review process was designed to evaluate all potentially harmful consolidations.
- The wireless industry is no different than any other industry that is subject to antitrust review of a merger, not industry-specific caps.
- Mergers should not be pre-judged by an arbitrary cap – they may be pro-competitive, anticompetitive, or competitively neutral.



- A comprehensive competitive analysis of a merger includes review of:
 - Ease of market entry;
 - Competitors' ability to expand output;
 - Technology;
 - Innovation;
 - Footprint of merging companies;
 - Geographic location;
 - Brand name;
 - Revenues;
 - Etc.



- Reliance on spectrum cap oversimplifies the merger review process.
- The amount of spectrum licensed to a carrier is too crude a measure of market power.
- The spectrum cap can impede the growth of successful firms, prevent efficient market outcomes.
 - Allowing some reallocation may enhance efficiency without harming competition.
 - Asymmetries in market shares are common in most industries.
- The spectrum cap perpetuates the “belt and suspenders” model.



THE SPECTRUM CAP DOES NOT RESULT IN SAVINGS OF RESOURCES OR ADMINISTRATIVE COSTS

- The spectrum cap review is duplicative – a competitive analysis is performed by the FCC through its Section 310(d) procedures and the DOJ through its merger review process.
- The spectrum cap is not such a bright line - intricate questions still arise regarding application of the spectrum cap (e.g., overlapping attributable interest review).
- Case-by-case reviews are required if a carrier files a waiver.

THE SPECTRUM CAP CAUSES AFFIRMATIVE HARM



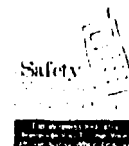
- The cap impairs carriers' ability to plan for and introduce innovative service offerings.
- The cap places artificial constraints on firms' size that can cause substantial losses of economies of scale or scope.
- The waiver process does not provide an effective "escape valve" from the spectrum cap.
 - Carriers are reluctant to file waivers that require the release of proprietary business information.
 - Carriers must be assured that they will have access to additional spectrum if they are going to make substantial capital expenditures. Waivers are not guaranteed.
- The cap harms the U.S. wireless industry's international competitiveness.

U.S. CARRIERS ARE MORE SPECTRUM-CONSTRAINED THAN THEIR FOREIGN COUNTERPARTS



Global Wireless Frequency Allocation

	US	UK	Germany	Japan	Italy
<i>Wireless Spectrum Allocation</i>	189 MHz	365 MHz	306 MHz	234 MHz	263 MHz
<i>Population</i>	281	59	82	127	57
<i>Wireless Subscribers (2000)</i>	110.5	40	51	58	41
<i>Penetration</i>	39%	68%	63%	46%	72%
<i># of National Carriers Per Country</i>	6	5	6	3	6
<i>Average Frequency By Carrier</i>	32	73	51	78	44
<i>Carrier 1</i>	33-45 MHz	82 MHz	61 MHz	86 MHz	62 MHz
<i>Carrier 2</i>	35-45 MHz	77 MHz	61 MHz	98 MHz	62 MHz
<i>Carrier 3</i>	25-35 MHz	85 MHz	70 MHz	50 MHz	49 MHz
<i>Carrier 4</i>	25-35 MHz	85 MHz	65 MHz	N/A	29 MHz
<i>Carrier 5</i>	25-35 MHz	33 MHz	25 MHz	N/A	30 MHz
<i>Carrier 6</i>	19 MHz	N/A	25 MHz	N/A	30 MHz





RAISING THE CAP IS NOT THE BEST SOLUTION

- The efficient number of firms will vary depending on specific industry conditions.
- As industry conditions change, any spectrum cap number chosen will become inappropriate.
- Over time, spectrum needs may vary significantly among firms.
 - Different technology choices may impact demand.
 - Different successes in the marketplace may impact demand.



CONCLUSION

- It would be more efficient for the Commission and industry if the FCC eliminated the cap and relied on antitrust review and FCC Section 310(d) prior approval procedures.
- Raising the cap is not a solution.
- Consumers would benefit from more service offerings and lower prices if the cap were eliminated.